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information:

1. The existing and proposed rates of depreciation;
2. The existing and proposed methods of calculating or determining the rates of depreciation;
3. The calculations or studies supporting the proposed change in depreciation rates;
4. The effect of the proposed changes on operating revenue deductions and operating income;
5. A statement as to the date when it is proposed to make the changes in depreciation rates effective, which date shall not be earlier than 90 days after the filing of a petition under this rule.

## 14:17-6.12 Petitions for reconsideration of assessment

(a) Petitions for reconsideration of the assessment levied in accordance with N.J.S.A. 48:5A-1 *et seq.*, where applicable, shall conform to the provisions of Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter to the extent applicable, and shall in the body thereof, or the exhibits attached thereto provide the following information:

1. A certified copy of a statement showing gross operating revenues derived from intrastate operations during the preceding calendar year;
2. Reasons why the petitioner feels the assessment is excessive, erroneous, unlawful or invalid.

## 14:17-6.13 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute shortages

(a) Petitions for authority to issue any stocks, bonds, notes or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.S.A. 48:5A-1 *et seq.*, and Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following:

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;
2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a

map or plot plan will be sufficient.

3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements or betterments proposed;

4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant, which might have been distributed in dividends a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, estimated if not known. The petitioner shall produce at the hearing, evidence in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired, comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period (in the case of cable television plant, additions and retirements shall be stated separately for each year); a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a cable television company, the petition must contain the following:

- i. Copy of certificate of incorporation;
- ii. Names and addresses of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;
- iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;
- iv. Corporate resolution or proposed resolution of directors of the cable television company authorizing the issuance of the stock;

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*Anthony J. Maglietta*  
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v. Copy of a *pro forma* balance sheet of the new corporation and copy of a *pro forma* income statement of estimated operating results anticipated for the first years of its proposed operations, unless a different period is specified by the Office;

vi. The name of the municipality and the street and number therein:

(1) In which the principal office in this State is to be located and the name of the agent in charge of such principal office upon whom process against the corporation may be served;

(2) In which the principal business office is to be located;

(3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:5A-1 *et seq.*, to be kept and the name, place of residence within this State and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Board or Office may be served. (The books of account must be kept in conformity with the appropriate Uniform System of Accounts prescribed by the Office.) Books and records must be kept within this State unless authority to do otherwise is obtained from the Board.

vii. A detailed list of organization expenditures;

viii. A copy of a *pro forma* balance sheet giving effect to the issuance of the proposed securities;

ix. Copy of a *pro forma* income statement giving effect to the issuance of the proposed securities;

x. The effective rate of interest or of the cost of money to the petitioner, and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not a public offering, and the financial sources that the petitioner has contacted in this connection. Petitioner should submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates which may be indicated.

8. Where one of the purposes is the issuance of bonds to be secured by an existing mortgage a statement showing the amount and use made of the proceeds of the bonds, if any, already issued under such mortgage;

9. Information relating to the current financial condition of the petitioner setting forth:

i. As to each class of capital stock of the petitioner, the amount authorized and the amount issued and outstanding;

ii. As to each class of preferred stock of the petitioner, a summary statement of the terms of preference thereof;

iii. As to each issue or series of long-term indebtedness of the petitioner, the principal amount authorized to be issued, date of issue, date of maturity, rate of interest and principal amount outstanding, and as to each

such issue secured by a mortgage upon any property of the petitioner, the date of said mortgage, name of trustee, principal amount authorized to be secured, and a brief description of the mortgaged property;

iv. Other indebtedness of all kinds, giving same by classes and describing security, if any;

v. Amount of interest charged to income during previous fiscal year upon each kind of indebtedness and rate thereof, and, if different rates were charged, amount charged at each rate;

vi. Amount of dividends paid upon each class of stock during previous fiscal year and rate thereof;

vii. Detailed income statement for previous fiscal year and balance sheet showing condition at the close of that year.

10. A statement whether any franchise or right is proposed to be capitalized directly or indirectly. In case it is proposed to capitalize any franchise. A copy of such franchise and a statement, together with an affidavit showing the amount actually paid for said franchise shall be attached to the petition;

11. Where any contract, agreement or arrangement, verbal or written has been to sell the securities proposed to be issued, a description of such contract, agreement or arrangement and, if in writing, a copy thereof;

12. If no contract, agreement, or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;

13. Petitions filed under this rule shall contain a certified copy of the resolution of the board of directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification shall include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition. Information which under this rule is required to be set forth in a petition or any exhibit attached thereto and which is contained in any report, document, pleading or other instrument previously filed with the Office pursuant to any requirement of any statute or any regulation of the Office, may be incorporated in such petition or exhibit by reference to the official filing thereof with the Office provided that said information is still correct in all respects.

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### 14:17-6.14 Petitions for authority to transfer capital stock

(a) Petitions for authority to transfer upon the books and records of any CATV company pursuant to N.J.S.A. 48:5A-1 *et seq.*, where applicable, any share or shares of its capital stock, shall conform to the provisions of Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferor and transferee;
2. A description of the proposed transferee including information as to whether the proposed transferee is a cable television company, a holding company either separately or by affiliation in a cable television holding company system, or a person or other domestic or foreign corporation;
3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;
4. The per cent in interest of the outstanding voting capital stock of the cable television company which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;
5. The reason for the proposed transfer;
6. Details and explanation of any changes expected to be made, if petition is approved, in:
  - i. Board of Directors;
  - ii. Officers and active managers;
  - iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and other matters affecting the public interest.
7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the cable television company's obligation to render safe, adequate, efficient and proper service.

### 14:17-6.15 Petition for permission to lend money or property

(a) Petitions for permission to lend money or property pursuant to N.J.S.A. 48:5A-1 *et seq.*, shall conform to Subchapter 5 (Pleadings Generally) of this Chapter and Sections 1 through 5 to the extent applicable, of this Subchapter and shall, in the body thereof, or in exhibits thereto, provide the following additional information:

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1. Name, address, per cent of stock ownership and affiliation with petitioner or other cable television company of lender;
2. Amount of money or description of property proposed to be lent;
3. A copy of the proposed agreement including the terms and conditions related thereto;
4. Reasons for the proposed loan;
5. Proof that the loan will not impair the petitioner's ability to provide safe, adequate, efficient, economical and proper service.

**14:17-6.16 Tariff filings which do not propose increases in charges to customers**

(a) Tariff filings which have as their objective the making effective of initial tariffs or of revisions, changes or alterations of existing tariffs, which are not filed because of the need for additional revenue from products or services covered by existing tariffs and which do not propose increases in charges to subscribers, shall conform to the provisions of Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or a prior tariff, and the effect, if any, upon revenues;
2. A statement of the reasons why the said tariff or change is proposed to be filed;
3. A statement of notices given, if any, together with a copy of the text of each of said notices;
4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than ten days after the filing unless otherwise permitted by the Office with the approval of the Board;
5. In the case of initial tariffs *pro forma* income statements for each of the first two years of operation and actual or estimated balance sheets as at the beginning and end of each year of said two-year period.

**14:17-6.17 Tariff filings or petitions which propose increases to customers**

(a) Tariff filings or petitions which have as their objective the making effective of revisions, changes or alterations of existing tariffs which propose

to increase any rate or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, shall conform to the provisions of Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter to the extent applicable, and shall in the body thereof, or in attached exhibits contain all applicable information and data set forth in Section 16 (Tariff filings which do not propose increases in charges to customers) of this Subchapter and in addition shall contain the following: (Financial statements shall be prepared in accordance with the applicable uniform system of accounts):

1. A comparative balance sheet for the most recent three-year (calendar year or fiscal year) period;

2. Comparative income statement for the most recent three-year (calendar year or fiscal year) period;

3. A balance sheet at the most recent date available;

4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate service rendered, the rates or charges which are the subject matter of the filing;

5. A *pro forma* income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as calculation showing the indicated rate of return on the average net investment (for the same period as that covered by the *pro forma* income statement) for example, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;

6. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five per cent of the cable television company's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges;

7. A copy of the form of notice to customers.

(b) Each cable television that makes a filing under subsection (a) of this Section shall unless otherwise ordered or permitted by the Board give notice thereof as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered cable television service, the charge for which is proposed to be increased.

2. Serve a notice of the filing and two copies of the petition or tariff on the Attorney General, at the State House Annex, Trenton, New Jersey 08625.

3. Serve a notice of the filing and a statement of the effect on subscribers of various classes on all current subscribers who are billed on a recurring basis and who will be affected by said filing. Such notice may be by bill insert or by publication in newspapers published and circulated in the cable television company's service area.

(c) Each cable television company that makes a filing under subsection (a) of this Section shall, after being advised by the Office of the time and place fixed for hearing, if any, and unless otherwise ordered or permitted by the Board or Office, serve notice at least 20 days prior to such time on those persons specified in subsection (b) 1 and (b) 2 of this Section and shall give such notice to those persons designated in N.J.A.C. 14:17-6.17(b) 3. as current subscribers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the cable television company's service area.

(d) The notices provided for in subsections (b) and (c) of this Section may be given simultaneously.

(e) Where notice is prescribed under this Section it shall be at the cost and expense of the party obligated to give or serve the notice.

(f) Proof of service and/or notice required by this rule shall be filed with the Office at least five days before the date set for hearing.

#### **14:17-6.18**      Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one cable television company of New Jersey with that of another cable television company, shall conform to provisions of Subchapter 5 of this Chapter and Sections 1 through 5 and 13 of this Subchapter as well as N.J.A.C. 14:11-1.17 to the extent applicable and shall contain in the petition or as attached exhibits, the following information:

1. Copy of agreement of merger or consolidation;
2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;
3. Copies of recent balance sheets of each company and a *pro forma* balance sheet of the continuing company;
4. Copies of recent income statements of the operations of each of the companies involved and a *pro forma* income statement of the continuing corporation, in sufficient detail;
5. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Office;

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6. Total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation, the par or stated value per share and the total amount of new capital stock to be issued;

7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved, will be exchanged for the new stock of the surviving corporation;

8. Is any franchise cost proposed to be capitalized on the books of the surviving corporation? If so, explain the reasons therefor, and in what manner and over what period the items are proposed to be amortized;

9. The names and addresses of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;

10. The various benefits to the public and the surviving corporation which will be realized as the result of the merger;

11. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management, affecting the public interest;

12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the electric and telephone utilities serving in the area, pursuant to N.J.A.C. 14:17-5.6;

13. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter;

14. A statement of the fees and expenses to be incurred in connection with the merger, and the accounting disposition to be made thereof, on the books of the surviving corporation.

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### Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Office, as required under N.J.S.A. 48:5A-1 *et seq.*, where applicable, shall conform to the provisions of Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter to the extent applicable, and shall in the body thereof or in attached exhibits, also provide the following information:

1. Complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;

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2. The exact location where the books and records will be kept;
3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;
4. The reason for proposing to keep its books and records at a location outside the State;
5. The availability of adequate required space, facilities and experienced personnel at the new location;
6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;
7. The extent of the financial advantage to the subscribers and other benefits to the cable television company which will result from keeping the books and records outside the State;
8. Will the books and records, which will be kept at the location outside the State, be, on notice in writing of the Office or Board, produce at such time and place within this State as the Office or Board may designate;
9. Will the petitioner pay to the Office any reasonable expenses or charges incurred by the Office for any investigation or examination, if the Board grants said permission;
10. The location at which the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the cable television company;
11. The name and address of the petitioner's statutory agent.

**14:17-6.20 Petitions by municipalities for permission to charge franchise fee above that prescribed in N.J.S.A. 48:5A-1 et seq.**

(a) Petitions by municipalities for permission to charge a franchise fee above that prescribed in N.J.S.A. 48:5A-1 et seq., shall be filed in one or two forms:

1. A municipal consent, included by a cable television company in its petition for Certificate of Approval, will be considered a petition for permission to charge a franchise fee in excess of that prescribed in N.J.S.A. 48:5A-1 et seq.; or
2. A petition in conformity with the requirements of Subchapter 5 of this Chapter and Sections 1 through 5 of this Subchapter, may be filed separately by a municipality;

3. Additionally, a municipality shall be required to provide the following information:

- i. Proof that the expenses to the municipality with respect to the regulation or supervision caused by the existence and operation of the cable television company is warranted;
- ii. Proof that the municipality has given notice of its filing to the affected cable television company.

**14:17-6.21 Petition to set aside refusal pursuant to N.J.S.A. 48:5A-17(e)**

(a) Petitions for an order setting aside municipal refusal for zoning variance, or other act or necessary authorization pursuant to N.J.S.A. 48:5A-17(e), shall conform to N.J.A.C. 14:17-5 (Pleadings Generally), and N.J.A.C. 14:17-6.1 through 6.5 to the extent applicable, and shall include, but not be limited to the following:

1. A map or site plan for the proposed facility showing the locations of any other potential alternative sites or existing CATV facilities in relation to the one in question;
2. A listing of alternative sites, if any, investigated or considered;
3. A copy of the decision or order below denying the requested approval;
4. Proof of concurrent service of a copy of the petition upon each of the following:
  - i. The municipal governing body;
  - ii. The agency, authority, board or other entity which denied the requested approval;
  - iii. Any adjoining property owners within 200 feet of the property for which approval is sought.

(b) The petition pursuant to this section must be filed with the Office within 60 days of written notice of the denial to the petitioner.

(c) The Board or administrative law judge shall hold a hearing on the matter in the community affected.

R.1984 d.167, eff. May 7, 1984.

See: 16 N.J.R. 25(a), 16 N.J.R. 1096(a).

**SUBCHAPTER 7. COMPLAINT PROCEDURE**

**14:17-7.1 Designation of the Office as complaint officer**

(a) When a municipality designates the Office as the "complaint officer" pursuant to the applicable provisions of N.J.S.A. 48:5A-1 *et seq.*, the following shall be the procedure for handling complaints:

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1. A complaint may be made by letter or other writing. Matters thus presented will be taken up with the parties affected by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without formal hearing or order. While no form of informal complaint is prescribed, to be considered by the complaint officer such complaint must be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

2. The complaint officer will bring the matter to the attention of the party complained of and direct the said party to submit information deemed to be pertinent as well as a statement of its position. Following a study and review positions and supporting data and after such informal conferences as may be held, an attempt will be made to effect an amicable adjustment of the dispute. A letter will then be forwarded, within 30 days of the receipt of said complaint, to all parties reflecting the results, if any, of the processing of the complaint. Complaints shall be without prejudice to the right of any party to file a petition pursuant to N.J.S.A. 48:5A-1 *et seq.*, to institute a formal proceeding.

## SUBCHAPTER 8. ANSWERS AND REPLIES

### 14:17-8.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Office in connection therewith shall file an answer in writing thereto with the Office.

(b) The answer shall be so drawn as to apprise the parties and the Office fully and completely of the nature of the defense and shall admit or deny

specifically and in detail all material allegations of the petition.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered.

(d) Answers shall not be required in any rate proceeding instituted by a cable television company.

#### **14:17-8.2 Time for filing**

Unless otherwise provided in these rules or ordered by the Office with the approval of the Board, an answer, if made must be filed within 20 days after the service of the pleading against which it is directed and a party desiring to reply to an answer shall file the same with the Board within 10 days after the service of the answer. Whenever the Office believes the public interest requires expedited procedure, it may shorten the time for any answer or reply. Upon motion on notice to all parties to the proceeding, the Office with the approval of the Board may, in its discretion, extend or shorten the time to file an answer or reply.

### **SUBCHAPTER 9. MOTIONS**

#### **14:17-9.1 Form and content**

(a) Unless made during a hearing, motions shall be in writing and shall set forth the relief or order sought and the grounds or reasons therefor.

(b) The requirements of writing are fulfilled if the motion is stated in a written notice of the motion.

(c) Motions based on matter which does not appear of record shall be supported by affidavit.

#### **14:17-9.2 Time for filing**

(a) Any motion directed to a petition must be filed before the answer is due, or such grounds of objection must be raised in the answer.

(b) If a motion is directed to an answer it must be filed before the reply is due, or such grounds of objection must be raised in the reply.

(c) If a motion is directed to a reply it must be filed within ten days after the service of the reply.

#### **14:17-9.3 Tolling of time for filing of responsive pleading**

The filing of a motion shall extend the time for filing of a responsive pleading until ten days after service by the Board of its decision on the motion, unless otherwise specifically ordered by the Board.

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### **14:17-9.4    Answers to a motion**

Answers to motions, supported by affidavit of factual matters are at issue, must be served and filed within five days of service of the motion to which the answer is directed.

## **SUBCHAPTER 10.    INTERVENTION**

### **14:17-10.1    Motion to intervene**

(a) Any person other than the original parties to the proceeding who shows that he may be substantially and specifically affected by the proceeding may move in writing for leave to intervene in the proceeding prior to or at the time it is called for hearing, or may make an oral motion for leave to intervene at the time of the hearing.

(b) Except for good cause shown, no such motion shall be granted after the proceeding is under way.

(c) Where a motion to intervene seeks to broaden the issues of the original proceeding, such motion shall be filed with the Office and copies thereof shall be served upon the original parties to the proceeding at least ten days prior to the date of hearing.

(d) The motion to intervene must disclose the name and address of the party intervening; the name and address of his attorney, if any, his interest affected by the proceeding; the nature and quantity of evidence he will present if such motion is granted; and, if affirmative relief is sought, a clear and concise statement of the relief sought and the basis therefor.

### **14:17-10.2    Disposition of motion to intervene**

(a) Motions to intervene shall be considered first at all hearings or may be set for prior hearing, and an opportunity shall be afforded to the original parties to be heard thereon.

(b) If it appears after such consideration that the person seeking to intervene has a substantial and specific interest with respect to the proceeding would not otherwise be adequately represented, the Board, the Director, or other presiding officer may grant the motion to intervene which may be done by oral order or decision at the time of the hearing, on such terms as the Board, the Director or other presiding officer may prescribe.

(c) Whenever it appears during the course of a proceeding that an intervenor has no substantial and specific interest which would be affected by the proceeding, the Board's Director may dismiss him from the proceeding.

**14:17-10.3 Limits on intervenor**

(a) Where two or more intervenors have substantially like interests and positions the presiding officer may at any time during the hearing, if he deems it advisable in order to expedite the proceeding, limit the number of intervenors who will be permitted to introduce evidence, cross-examine witnesses or to make and argue motions and objections, noting nonetheless the appearance of said intervenors, the names of the witnesses to be offered and the fact that their testimony is corroborative of the position of the prior intervenors.

**SUBCHAPTER 11. HEARING EXAMINERS****14:17-11.1 Designation**

The Board or the Director with the approval of the Board may by general order in writing designate as a hearing examiner such person or persons, as provided by statute, as its representative or representatives in, and, on its behalf to conduct any hearing in any proceeding now or hereafter pending before the Office.

**14:17-11.2 Authority**

(a) The duly designated hearing examiner shall have authority within the Board's powers and subject to the published rules of the Office, as follows:

1. To regulate the course and conduct of hearings in the assigned proceeding;
2. To administer oaths and affirmations;
3. To rule upon offers of proof and to receive evidence;
4. To hold appropriate conferences before or during hearings;
5. To dispose of procedural motions, requests and other similar matters; but he shall not, except in his report and recommendations filed at the conclusion of the proceeding, pass upon a motion to dismiss the proceeding or other motion involving a final determination of the proceeding. Where a motion is made to dismiss a proceeding or other motion which would be dispositive of a proceeding, the hearing examiner shall determine whether to forthwith refer the motion to the Board for determination or to proceed with the hearing and refer the motion at the conclusion thereof. The Board, if it grants the motion, shall order the entire proceeding dismissed. In denying such motion the Board may, nevertheless, by its ruling impose such terms or otherwise limit the scope of the hearing as in its discretion, it deems appropriate, and either certify the entire proceeding for further hearing and adjudication before itself, or order the hearing examiner to proceed with the hearing, consistent with its ruling;

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6. To fix the time and order for filing and service of briefs provided, however, that he may not allow more than 30 days for the filing or service of initial briefs nor more than 15 days for the filing and service of answering and reply briefs, if any;

7. To certify, within his discretion or upon discretion of the Board, any question to the Board for its consideration and disposition, or upon direction of the Board, to cause the entire proceeding to be certified to it;

8. To take such other action as may be necessary and appropriate to the discharge of his duties consistent not only with the statutory or other authority under which the Board functions but with rules, regulations and policies of the Office and Board as well.

### **14:17-11.3 Hearing examiner's report and recommendations**

(a) Unless otherwise directed or permitted by the Board, the hearing examiner shall not later than 30 days after completion of all steps in the proceeding before him, certify to and file with the Secretary of the Board the record of the hearing and his report and recommendations which shall include his findings of fact and conclusions of law and his recommended decision and order.

(b) The hearing examiner's report and recommendations shall be served by the Secretary of the Board upon all parties of record.

(c) The provisions of this rule pertaining to the filing and service of the hearing examiner's report and recommendations shall not apply where the preparation and service of the report and recommendations have been waived by the parties.

### **14:17-11.4 Waiver of hearing examiner's report and recommendations**

(a) Where all parties of record waive preparation and service of the hearing examiner's report and recommendations, the hearing examiner shall certify the entire record directly to the Board for its determination.

(b) However, if any party of record does not rule, then all parties of record shall be served with a copy of the report and recommendations in accordance with N.J.A.C. 14:1-12.3 and the rights of all parties with respect thereto under these rules shall be preserved.

### **14:17-11.5 Effect of failure to appear at hearing**

(a) Unless a contrary intent has been expressed on the record, any party of record who fails to appear at the final day of hearing shall be deemed to have waived the preparation and service of the hearing examiner's report and

recommendations to have agreed to the certification of the proceeding to the Board.

(b) Waiver by failure to appear shall have the same effect as a waiver and consent under N.J.A.C. 14:17-13.4.

**14:17-11.6 Appeals to Board from rulings of hearing examiner during hearing**

Rulings of the hearing examiner may not be appealed to the Board during the course of any hearing except in extraordinary circumstances when prompt decision by the Board is necessary to prevent detriment to the public interest.

**14:17-11.7 Exceptions to the Board from the report and recommendations of the hearing examiner**

(a) Any party objecting to the report and recommendations of the hearing examiner shall within 15 days after service of a copy of the hearing examiner's report and recommendations file four copies of a notice of exceptions thereto together with proof of service of such notice of exceptions on all parties of record.

(b) Within 15 days after the filing of the notice exceptions the party filing the same shall file and serve his exceptions which shall specify the particular statements or parts to which exception is taken shall designate by special references the portions of the record relied upon in support of such exceptions shall set out specific findings of fact and conclusions of law proposed in lieu thereof and shall include any proposed additional findings of fact and conclusions of law. Exceptions to conclusions of law shall be specific; shall briefly cite the statutory provisions or principal authorities relied upon; shall set forth conclusions suggested in lieu thereof; and shall include any proposed additional conclusions. Exceptions to the recommended order shall specify the portions thereof excepted to, and shall set forth a form of order suggested in lieu of the recommended order. Supporting reasons for exceptions shall be submitted in the same document or in an accompanying brief. Six copies of such exceptions and briefs shall be filed with the Board through the Office, together with proof of service of such exceptions on all parties of record.

(c) Failure to file a notice of exception or exceptions within the time allowed shall constitute a waiver of all objections to the hearing examiner's report and recommendations. Unless permitted by the Board any matter of record not included in the exceptions filed as provided in this rule may not thereafter be objected to before the Board upon brief or oral argument or upon application for rehearing and any matter of record not included in such exceptions shall be deemed waived. Exceptions to the hearing examiner's report and recommendations based upon admission or exclusion of evidence

## **14:17-11.8**

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not objected to at the time of the hearing examiner's ruling was made will be unavailing unless permitted by the Board.

(d) If exceptions to the hearing examiner's report and recommendations and accompanying briefs have been filed and served, other parties of record may file an answer thereto and supporting brief within 15 days of service of the exceptions. The number of copies of the answer and brief to be filed with the Board, through the Office, the manner of service, and filing of proof of service shall conform to the provisions of subsection (b) of this Section.

(e) The exceptions and answer thereto, if any, will be disposed of by the Board on the exceptions, answers and briefs filed unless the Board in its discretion requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

## **14:17-11.8**

### **Review of hearing examiner's report and recommendations by the Board on its own motion or by recommendations of the Director**

The Board may institute on its own motion or by recommendation of the Director a review of any aspect of the hearing examiner's report and recommendations and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

## **14:17-11.9**

### **Hearing examiner's report and recommendations does not automatically become the order or decision of Board**

(a) The report and recommendations of the hearing examiner will not become an order or decision of the Board without affirmative action.

(b) The Board will either adopt, reject or modify the report and recommendations.

(c) If there are no exceptions to the report and recommendations and the Board proposes to reject or modify the report and recommendations then the provisions of N.J.A.C. 14:17-12.9 are applicable.

## **14:17-11.10**

### **Unavailability of hearing examiner**

If a hearing examiner becomes unavailable to the Board, the Board or the Office with the approval of the Board will either designate another qualified officer to serve in his place, who shall read the record theretofore made, or will cause the matter to be certified to it, or take such other action as may be deemed appropriate, giving notice to the parties or their attorneys of record.

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14:17-12.4

SUBCHAPTER 12. HEARINGS

14:17-12.1 Place and time of hearings

(a) Notice in writing will be given by the Office to parties or their attorneys of record of the place, date and hour of the initial hearing at least ten days before the time set therefor, unless the Board, the Director or the presiding officer shall find that public necessity requires the hearing to be held at an earlier date.

(b) Where the hearing is presided over by a hearing examiner, he shall not adjourn a matter for more than 30 days without the approval of the Director.

(c) In any proceeding, the Office may require a party to give notice of the hearing and its scope to persons who may be affected by the proceeding, which may include publication and posting of notice of hearing, at such party's expense, in such manner and for such time and in such newspapers as the Board, the Director or the presiding officer may designate.

14:17-12.2 Open hearings

Hearings shall be open to the public.

14:17-12.3 Before whom held

Hearings shall be held before the Board, a member thereof, the Director or officer duly designated hearing examiner, hereafter referred to as presiding officer.

14:17-12.4 Procedure at hearing

(a) The presiding officer shall call the proceeding for hearing, cause the appearances to be entered on the record and act upon pending motions.

(b) In hearings upon petitions, the petitioner shall open and close.

(c) The presiding officer shall determine the order in which parties other than the petitioner may be heard.

(d) In proceedings under N.J.A.C. 14:17-16.16 and 16.17 the cable television company shall open and close.

(e) In proceedings instituted on the Board's own motion the respondent shall open and close unless the Board or the presiding officer otherwise directs.

(f) In proceedings where the evidence is peculiarly within the knowledge or control of another party or participant, the foregoing order of proceeding may be waived by the presiding officer.

## **14:17-12.5**

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### **14:17-12.5 Consolidation**

(a) The Board or the presiding officer may consolidate two or more proceedings for hearing where related questions of law or fact are involved provided that the rights of parties will not be prejudiced by such procedure.

(b) Where two or more proceedings are consolidated for hearing the presiding officer shall determine the order in which the parties shall be heard and introduce evidence.

### **14:17-12.6 Witnesses**

(a) Witnesses shall be examined orally and for good cause shown the Board may permit their testimony to be taken by deposition in the manner provided for by the civil practice rules applicable in the Superior Court. Witnesses shall be sworn, or shall affirm, before their testimony is taken.

(b) Written testimony of any witness may be offered provided its author is produced at a hearing and swears or makes affirmation to the truth and accuracy thereof and is available for cross-examination, provided that copies of such written testimony shall have been filed with the Office and served upon all or such parties to the proceeding or their attorneys of record at least ten days in advance of the session of the hearing at which such testimony is offered, unless all parties in attendance at the said session of the hearing shall agree that all or any part of such ten days' prior service be waived, except that the Board, or presiding officer, in the absence of such an agreement, may permit the introduction of such written testimony after giving all parties present a reasonable opportunity to examine it. Whenever in the circumstances of a particular case it is deemed necessary or desirable, the Board or presiding officer may direct that testimony to be given upon direct examination be reduced to writing within a reasonable period of time and be served and offered in the manner hereinbefore set forth. Objections to the qualifications of the witness or to such written testimony or to any part thereof may be made by motions to strike.

(c) Witnesses appearing at a hearing may, in the discretion of the presiding officer, be given an opportunity to testify out of the usual order of presentation of the evidence.

### **14:17-12.7 Subpoenas**

(a) Subpoenas requiring the attendance of witnesses, unless directed by the Board upon its own motion, shall issue only by direction of the Board, one of its members, the Director or the presiding officer upon written petition with proof of service upon the parties to the proceeding at least five days prior to the date of the hearing and accompanied by the statutory fee, which shall specify the general relevance, materiality and scope of the testimony sought.

(b) Subpoenas for the production of books, papers or documents unless directed to be issued by the Board on its motion, shall be issued by the Board, one of its members, the Director or the presiding officer. Upon petition in writing at least ten days before the date of hearing, accompanied by the statutory fee. The petition shall describe the books, papers or documents and the facts to be proved by them in sufficient detail to indicate the materiality and relevancy of the evidence sought. Copies of such petitions shall be served by the petitioner upon the parties prior to the filing thereof and proof of service shall be filed. The Board or presiding officer may require hearing on said petition upon notice to the parties.

(c) Witnesses subpoenaed shall be paid fees and mileage as provided by N.J.S.A. 48:2-39. Witnesses subpoenaed at the instance of a party shall be paid the fees by the party at whose instance the witness is subpoenaed, and the Board or Office before issuing any subpoena (*ad testificandum* or *duces tecum*) may require a deposit of an amount adequate to cover the fees and mileages.

(d) Subpoenas shall be subject to motions to quash filed with the Office at least five days prior to the date of hearing. The presiding officer may waive the five day requirement and permit an oral motion.

(e) No member or employee of the Board or the Office shall be subpoenaed to give testimony or to produce records in any proceeding before the Board or Office unless called as a witness by the Board, the Director or the presiding officer, or otherwise permitted by the Board.

#### 14:17-12.8 Stipulations

(a) Stipulations with respect to any matter of fact or authenticity of any books, papers or documents may be received in evidence at a hearing and when so received shall be binding on the parties with respect to the matters therein stipulated.

(b) All stipulations except those entered into during the course of a hearing shall be in writing.

(c) Stipulations not in writing shall be stated on the transcript of the hearing.

#### 14:17-12.9 Evidence offered at hearings

(a) In any proceeding before the Board, the Director or the presiding officer all evidence having reasonable probative value shall be admitted but evidence which is immaterial, irrelevant or unduly repetitious or cumulative shall be limited or excluded.

(b) When objections to the admissibility or exclusion of evidence before the Board, the Director or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions to rulings thereon by the Board,

the Director or the presiding officer shall not be deemed necessary to preserve the rights of the objector on review, rehearing or appeal.

(c) Where matter offered in evidence is embraced in a document containing other matter not intended to be put in evidence, the party offering the same shall plainly designate the matter so offered. If the other matter in such document is of such bulk or extent as would unduly encumber the record, such document will not be received in evidence, but it may be marked for identification and, if properly authenticated, the relevant and material parts thereof offered, may be read into the record, or if the Board, the Director or the presiding officer so directs a copy of such matters shall be received in evidence as an exhibit, and copies shall be delivered by the party offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(d) In case there is offered in evidence any matter contained in a report or other document on file with the Office or any portion of the record in any other proceeding before the Office or Board, such report, other document, or record in another proceeding need not be produced or marked for identification but the matter therein offered may be admitted in evidence by reference on motion plainly identifying the matter offered and demonstrating that it is reasonably available to the parties.

(e) Except as otherwise provided in these rules when exhibits are offered in evidence, four copies shall be furnished to the presiding officer and one to each of the parties or their counsel present at the session of the hearing at which the exhibit is offered unless the Board, the Director or the presiding officer otherwise directs.

(f) Official notice may be taken of such matters as might be judicially noticed by the courts of this State.

(g) At any stage of the hearing, of after the close of testimony the Board, the Director or the presiding officer may call for further evidence upon any issue and require such evidence to be presented by the party or parties concerned at a hearing to be held for that purpose. The provisions of this subsection however, shall in nowise be deemed to relieve or excuse a party charged with the burden of proof from as fully sustaining said burden as he would be without regard to the provisions of this subsection.

(h) All pleadings and orders shall be considered as parts of the record as pleadings, but shall not be considered as evidence of any fact other than the filing thereof unless offered and received in evidence.

#### 14:17-12.10 Transcript

(a) The Office will cause to be made a stenographic report of all public hearings by the official reporter designated by the Board and the transcript

thereof shall be a part of the record and the sole official transcript of the proceedings. Except that the presiding officer may direct that the stenographer's notes not be placed in transcript form.

(b) Corrections in the official transcript may be made only to make it conform to the testimony actually presented at the hearing. Any party may propose corrections. The Board, the Director or other presiding officer may call for submission of proposed corrections. No corrections or physical changes shall be made in or upon the official transcript of the proceeding, even though agreed to by the parties or their counsel, unless authorized by the Board, the Director or the presiding officer at appropriate times during the course of the proceeding.

(c) Any person desiring copies of the transcript may obtain the same from the official reporter upon payment of the fee therefor. However, this shall not preclude any party from obtaining a transcript at his own cost and expense.

(d) Every petitioner seeking affirmative relief, where a hearing is held, shall furnish the Board with a copy of the transcript at the petitioner's cost and expense within 14 days of the date of the hearing, unless a different period is ordered by the presiding officer.

### SUBCHAPTER 13. CONFERENCES

#### 14:17-13.1 Purposes

(a) Informal conferences of parties or their attorney may be held at any time to provide opportunity for settlement, subject to approval of the Office, of a proceeding or any of the issues therein, and for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment, as time, the nature of the proceeding and the public interest may permit.

(b) Prehearing conferences of parties or their attorneys may be held to expedite the orderly conduct and disposition of any hearing, and at such conferences there may be considered, in addition to the matters set forth in subsection (a) of this Section the possibility of the following:

1. Simplification of the issues;
2. Exchange and acceptance of service and exhibits and written testimony proposed to be offered in evidence;
3. Obtaining of admission as to or stipulation of facts not remaining in dispute, or the documents or other evidence;
4. Limitation of the number of expert witnesses;
5. Such other matters as may be properly dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

#### 14:17-13.2 Initiation of conferences

(a) The Director or the presiding officer, with or without motion, may

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direct that a conference be held either prior to or at any stage of a hearing.

(b) On motion of a party, the presiding officer designated to preside at the hearing or such other officer as the Director may designate, may direct the parties or their attorneys to appear for a conference to consider the matters outlined in N.J.A.C. 14:17-12.1.

(c) Due notice of the time and place of such conference will be given to all parties.

(d) Nothing contained in this rule shall be construed as precluding any party to a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the Office, or from requesting conferences for such purposes.

### 14:17-13.3 Stipulation of conference results

(a) Upon conclusion of a conference other than under N.J.A.C. 14:17-11.1 the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon and three copies thereof shall be filed with the Office within ten days of the date of the conference.

(b) Such stipulations shall be signed by the parties or their attorneys, shall be received in evidence as part of the record and when so received, shall be binding on the parties with respect to the matters therein stipulated.

### 14:17-13.4 Unaccepted offers of settlement privileged

Unaccepted proposals of settlement or of adjustment or as to procedure to be followed and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any attorney or party.

## SUBCHAPTER 14. REOPENING OF HEARINGS

### 14:17-14.1 Method of reopening

(a) Any time after the conclusion of a hearing in a proceeding or adjournment thereof *sine die*, but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board through the office a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, or that the Director recommends the reopening of such hearing, the Board will issue an order for the reopening of the same.

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### 14:17-14.2 Motion to reopen

(a) Upon filing by any party of a motion for the reopening of a hearing, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within ten days following the service of a motion to reopen any party to the proceeding may serve upon the moving party and file with the Board through the Office his answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answer to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

## SUBCHAPTER 15. REHEARING, REARGUMENT OR RECONSIDERATION

### 14:17-15.1 Method of instituting

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion or by recommendation of the Director and extend, revoke or modify any decision or order made by it.

### 14:17-15.2 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within ten days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.